

**CHAPTER 2**  
**INVESTIGATION**



## CHAPTER 2

### INVESTIGATION

#### 2.1. DEPARTMENT DUTY TO INVESTIGATE

##### 2.1.1. *Statutory Duty*

The law gives the Department of Human Services the duty to investigate cases of suspected child abuse or neglect:

(2) The department shall study and act upon a request for service as to, or a report received of, neglect, exploitation, abuse, cruelty, or abandonment of a child by a parent, guardian, custodian, or person serving in loco parentis, or a report concerning a child in need of protection. On the basis of the findings of the study, the department shall assure, where necessary, the provision of appropriate social services to the child, parent, guardian, custodian, or person serving in loco parentis, to reinforce and supplement the parental capabilities, so that the behavior or situation causing the problem is corrected or the child is otherwise protected. In assuring the provision of services and providing the services, the department shall encourage participation by other existing governmental units or licensed agencies and may contract with those agencies for the purchase of any service within the scope of this subsection. The department shall initiate action in an appropriate court if the conduct of a parent, guardian, or custodian requires. The department shall promulgate rules necessary for implementing the services authorized in this subsection. The rules shall include provision for local citizen participation in the program to assure local understanding, coordination, and cooperative action with other community resources. In the provision of services, there shall be maximum utilization of other public, private and voluntary resources available within a community.<sup>1</sup>

##### 2.1.2. *Alleged Child Maltreatment in Child Care Settings and Institutions*

The Child Protection Law requires that suspected child abuse or neglect in a childcare setting or institution be investigated by an administratively independent agency.<sup>2</sup> MDHS Services Manual, Item 713 addresses the process of that investigation which will not be elaborated here.

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<sup>1</sup>. MCL 400.115b(2)

<sup>2</sup>. MCL 722.628(7)

### 2.1.3. *Commencing An Investigation*

The Child Protection Law identifies the Department of Human Services as the single State agency responsible for receiving and acting upon reports of suspected child abuse or neglect and sets out its investigative duties.

(1) Within 24 hours after receiving a report made pursuant to this act, the department shall...commence an investigation of the child suspected of being abused or neglected...<sup>3</sup>

Commencing an investigation requires contact with someone other than the referring person within 24 hours of receipt of a complaint to assess risk and determine the Department response.

(2) In the course of its investigation, the department shall determine if the child is abused or neglected. The department shall cooperate with law enforcement officials, courts of competent jurisdiction, and appropriate state agencies providing human services in relation to preventing, identifying, and treating child abuse and neglect; shall provide, enlist, and coordinate the necessary services, directly or through purchase of services from other agencies and professions; and shall take necessary action to prevent further abuses, to safeguard and enhance the welfare of the child, and to preserve family life where possible.<sup>4</sup>

## 2.2. **COORDINATION BETWEEN PROTECTIVE SERVICES AND LAW ENFORCEMENT**

### 2.2.1. *Responsibility for Investigation*

In each county, the prosecuting attorney and the Department are required to establish procedures for involving law enforcement officials in suspected child abuse and neglect cases.<sup>5</sup> The county prosecuting attorney and the DHS are obliged to adopt and implement a standard child abuse and neglect protocol using as a model the protocol developed by the Governor's Task Force on Children's Justice as published in DHS Publication 794 (revised 8-98) and DHS Publication 779 (8-98), or an updated version of those publications.<sup>6</sup> Some investigations will be the primary responsibility of the DHS, others will be the primary responsibility of law enforcement and still others will be conducted as joint DHS-law enforcement investigations.

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<sup>3</sup>. MCL 722.628(1)

<sup>4</sup>. MCL 722.628(2)

<sup>5</sup>. MCL 722.628(6)

<sup>6</sup>. State of Michigan Governor's Task Force on Children's Justice, *A Model Child Abuse Protocol: Coordinated Investigative Team Approach*, MDHS 1993.

The Department is the reporting point for all complaints of child abuse or neglect regardless of who the perpetrator may be or what may be the relationship between the victim and perpetrator. Upon receipt of the complaint, the Department is to determine whether the alleged perpetrator is a person responsible for the child's health or welfare.<sup>7</sup> Principal responsibility for investigation falls to the Department where the alleged perpetrator is a person responsible for the child's health or welfare.

2.2.2. *Referrals from DHS to Law Enforcement – DHS Responsibilities*

The Department is to refer the report to the prosecuting attorney within 24 hours of receiving the complaint if the Department believes that the complaint has a basis in fact and the report or subsequent investigation indicates that the alleged perpetrator was not a person responsible for the child's health or welfare.<sup>8</sup> The DHS *shall* also transmit reports to the prosecuting attorney within 24 hours where the report indicates criminal child maltreatment -- namely violations of MCL 750.136b (criminal child abuse), MCL 750.145c (child sexual exploitation and pornography), and MCL 750.520b to 750.520g (criminal sexual conduct).<sup>9</sup>

In these cases, the Department is required to transmit a copy of the written report and the results of any investigation to the prosecuting attorney of the counties in which the child resides and is found.<sup>10</sup> Since a child may be found in one county but reside in another, the Department may need to send reports to more than one prosecutor's office.

The Child Protection Law also requires the Department to seek the assistance of and cooperate with law enforcement officials within 24 hours of becoming aware that 1 or more of the following conditions exist:

- (a) Abuse or neglect is the suspected cause of a child's death.
- (b) The child is the victim of suspected sexual abuse or sexual exploitation.
- (c) Abuse or neglect resulting in severe physical injury to the child requires medical treatment or hospitalization. For purposes of this subdivision, "severe physical injury" means brain damage, skull or bone fracture, subdural hemorrhage or hematoma, dislocation,

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<sup>7</sup>. MCL 722.623(6) MCL 722.622(u), "Person responsible for the child's health or welfare" means "a parent, legal guardian, person 18 years or older who resides for any length of time in the same home in which the child resides, or except when used in section 7(2)(e) or 8(8), nonparent adult; or an owner, operator volunteer of employee of [a licensed or unlicensed day care center, group day care home or adult foster care home]."

<sup>8</sup>. MCL 722.623(6)

<sup>9</sup>. MCL 722.623(6)

<sup>10</sup>. MCL 722.623(6)

- sprains, internal injuries, poisoning, burns, scalds, severe cuts, or any other physical injury that seriously impairs the health or physical well-being of a child.
- (d) Law enforcement intervention is necessary for the protection of the child, a department employee, or another person involved in the investigation.
- (e) The alleged perpetrator of the child's injury is not a person responsible for the child's health or welfare.<sup>11</sup>

In addition, the Department *may* provide copies of any report of suspected child abuse or neglect to the prosecuting attorney and the Family Court of the counties in which the child resides or is found.<sup>12</sup> The statute makes it clear, however, that the primary responsibility for investigating allegations of harm by a child's caretaker rests with the Department.

Involvement of law enforcement officials pursuant to this section does not relieve or prevent the department from proceeding with its investigation or treatment if there is reasonable cause to suspect that the child abuse or neglect was committed by a person responsible for the child's health or welfare.<sup>13</sup>

### 2.2.3. *Law Enforcement Responsibilities*

Law enforcement is required to cooperate with the Department in conducting investigations under the Child Protection Law.<sup>14</sup> Within 24 hours of receiving a report from the Department or a reporting person, the local law enforcement agency is required to commence its investigation or refer the case to the county Department where the child is found.<sup>15</sup> Law enforcement shall refer the matter to the Department if it:

[r]eceives an allegation or written report of suspected child abuse or child neglect and the allegation, written report, or subsequent investigation indicates that the child abuse or child neglect was committed by a person responsible for the child's health and welfare...<sup>16</sup>

If a person in certain "child-sensitive" jobs is bound over to stand trial for particular child maltreatment crimes, the prosecuting attorney is required to send notices to the employer or governing body of the school or agency

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<sup>11</sup>. MCL 722.628(3)

<sup>12</sup>. MCL 722.623(5)

<sup>13</sup>. MCL 722.628(5)

<sup>14</sup>. MCL 722.628(4)

<sup>15</sup>. MCL 722.628(1)

<sup>16</sup>. MCL 722.623(7)

which employs that individual.<sup>17</sup> The crimes that require such employer notification are:

- a. Criminal sexual conduct in the first, second, or third degree in violation of section 520b, 520c, or 520d of the Michigan penal code, \*\*\* being sections 750.520b, 750.520c, and 750.520g of the Michigan Compiled Laws.
- b. Assault with intent to commit criminal sexual conduct in violation of section 520g \*\*\*, being section 750.520g of the Michigan Compiled Laws.
- c. A felonious attempt or a felonious conspiracy to commit criminal sexual conduct.
- d. An assault on a child that is punishable as a felony.
- e. Child abuse in the first, second or third degree, in violation of section 136b \*\*\*, being section 750.136b of the Michigan Compiled Laws
- f. Involvement in child sexually abusive material or child sexually abusive activity in violation of section 145c \*\*\*, being section 750.145c of the Michigan Compiled Laws.<sup>18</sup>

If the person is an employee of a nonpublic school, the statute requires the prosecuting attorney to notify the governing body of the nonpublic school.<sup>19</sup> If the person is an employee of a school district or intermediate school district, the prosecutor must send the notice to the superintendent of the district.<sup>20</sup> If the person is employed by the Department providing service to children and youth, the prosecutor is to notify the county DHS director or the superintendent of the training school.<sup>21</sup> If the individual is an employee of a child-care provider, the prosecutor shall notify the Department and the owner or operator of the child-care provider's child care organization or adult foster care location authorized to care for a child, and the child care regulatory agency with authority over that child care organization or adult foster care location authorized to care for a child.<sup>22</sup>

Upon final disposition of a criminal matter for which such notice was sent to employers, the prosecutor is required to notify such person as to that disposition.<sup>23</sup> A person receiving such information must keep the

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<sup>17</sup>. MCL 722.628a

<sup>18</sup>. MCL 722.628a(1)

<sup>19</sup>. MCL 722.628a(2)

<sup>20</sup>. MCL 722.628a(3)

<sup>21</sup>. MCL 722.628a(4)

<sup>22</sup>. MCL 722.628a(5)

<sup>23</sup>. MCL 722.628a(6)

information received confidential except insofar as necessary to take appropriate action in response to the information.<sup>24</sup>

#### 2.2.4. *Criminal Child Abuse*

A child protection investigation may reveal violations of the criminal law. The county prosecuting attorney has discretion as to which cases are prosecuted criminally but the most serious cases most likely will be. Injuries, assaults, and other harms to children, whether inflicted by parents or others, are crimes subject to the same criminal statutes and criminal prosecution as similar acts done to adults. In addition to these criminal statutes, the Legislature has created special child abuse laws in the penal code.

##### *Exposing child with intent to injure or abandon.*

(1) Any father or mother of a child under the age of 6 years, or any other individual, who exposes the child in any street, field, house or other place, with intent to injure or wholly to abandon the child, is guilty of a felony, punishable by imprisonment for not more than 10 years.

(2) Except for a situation involving actual or suspected child abuse or child neglect, it is an affirmative defense to a prosecution under subsection (1) that the child was not more than 72 hours old and was surrendered to an emergency service provider under \* \* \* MCL 712.1 to 712.20. A criminal investigation shall not be initiated solely on the basis of a newborn being surrendered to an emergency service provider under \* \* \* MCL 712.1 to 712.20. (also known as the Safe Delivery of Newborns Law.)

(3) As used in this section:

- (a) "Emergency service provider" means a uniformed employee or contractor of a fire department, hospital, or police station when that individual is inside the premises and on duty.
- (b) "Fire department" means an organized fire department as that term is defined in \* \* \* MCL 29.1.
- (c) "Hospital means a hospital that is licensed under \* \* \* MCL 333.20101 to 333.22260.
- (d) "Police station" means a police station as that term is defined in \* \* \* MCL 257.43.

##### *Contributing to the neglect of a child.*

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<sup>24</sup>. MCL 722.628a(7)



A person contributing to the neglect or delinquency of a child by any act or word, tending to cause the child to come under the jurisdiction of the Juvenile Division of the Probate Court is guilty of a misdemeanor.<sup>25</sup> Accosting, enticing, or soliciting a child under the age of 16 for immoral purposes is also a misdemeanor, and a second offense is a felony.<sup>26</sup>

*Child pornography.*

A person involved with child pornography may be guilty of a felony.<sup>27</sup>

*Criminal sexual conduct.*

The criminal sexual conduct statute is often invoked in cases active as family child protection cases. *See* MCL 750.520b *et. seq.*

**Sec. 520b.** (1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

- (a) That other person is under 13 years of age.
- (b) That other person is at least 13 but less than 16 years of age and any of the following:
  - (i) The actor is a member of the same household as the victim.
  - (ii) The actor is related to the victim by blood or affinity to the fourth degree.
  - (iii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.
  - (iv) The actor is a teacher, substitute teacher, or administrator of the public or nonpublic school in which that other person is enrolled.
- (c) Sexual penetration occurs under circumstances involving the commission of any other felony.
- (d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:
  - (i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
  - (ii) The actor uses force or coercion to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in subdivision (f)(i) to (v).
- (e) The actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.

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<sup>25</sup>. MCL 750.145

<sup>26</sup>. MCL 750.145a; MCL 750.145b

<sup>27</sup>. MCL 750.145c

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes but is not limited to any of the following circumstances:

- (i) When the actor overcomes the victim through the actual application of physical force or physical violence.
- (ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute these threats.
- (iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute this threat. As used in this subdivision, "to retaliate" includes threats of physical punishment, kidnapping, or extortion.
- (iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes that are medically recognized as unethical or unacceptable.
- (v) When the actor, through concealment or by the element of surprise, is able to overcome the victim.

(g) The actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:

- (i) The actor is related to the victim by blood or affinity to the fourth degree.
- (ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(2) Criminal sexual conduct in the first degree is a felony punishable by imprisonment in the state prison for life or for any term of years.

**Sec. 520c.** (1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

(a) That other person is under 13 years of age.

(b) That other person is at least 13 but less than 16 years of age and any of the following:

- (i) The actor is a member of the same household as the victim.
- (ii) The actor is related by blood or affinity to the fourth degree to the victim.
- (iii) The actor is in a position of authority over the victim and the actor used this authority to coerce the victim to submit.
- (iv) The actor is a teacher, substitute teacher, or administrator of the public or nonpublic school in which that other person is enrolled.

(c) Sexual contact occurs under circumstances involving the commission of any other felony.

- (d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:
  - (i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
  - (ii) The actor uses force or coercion to accomplish the sexual contact. Force or coercion includes but is not limited to any of the circumstances listed in sections 520b(1)(f)(i) to (v).
- (e) The actor is armed with a weapon, or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon.
- (f) The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes but is not limited to any of the circumstances listed in section 520b(1)(f)(i) to (v).
- (g) The actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
- (h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:
  - (i) The actor is related to the victim by blood or affinity to the fourth degree.
  - (ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.
- (2) Criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than 15 years.

**Sec. 520d.** (1) A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exist:

- (a) That other person is at least 13 years of age and under 16 years of age.
- (b) Force or coercion is used to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in section 520b(1)(f)(i) to (v).
- (c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
- (d) That other person is related to the actor by blood or affinity to the third degree and the sexual penetration occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a prosecution under this subdivision that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence. This subdivision does not apply if both persons are lawfully married to each other at the time of the alleged violation.
- (e) That other person is at least 16 years of age but less than 18 years of age and a student at a public or nonpublic school. This subdivision does

not apply if the other person is emancipated or if both persons are lawfully married to each other at the time of the alleged violation.

(2) Criminal sexual conduct in the third degree is a felony punishable by imprisonment for not more than 15 years.

**Sec. 520e.** (1) A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if any of the following circumstances exist:

(a) That other person is at least 13 years of age and under 16 years of age, and the actor is 5 or more years older than that other person.

(b) Force or coercion is used to accomplish the sexual contact. Force or coercion includes but is not limited to any of the following circumstances:

(i) When the actor overcomes the victim through the actual application of physical force or physical violence.

(ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute these threats.

(iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute this threat. As used in this subdivision, "to retaliate" includes threats of physical punishment, kidnapping, or extortion.

(iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes that are medically recognized as unethical or unacceptable.

(v) When the actor achieves the sexual contact through concealment or by the element of surprise.

(c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(d) That other person is related to the actor by blood or affinity to the third degree and the sexual contact occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a prosecution under this subdivision that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence. This subdivision does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(e) The actor is a mental health professional and the sexual contact occurs during or within 2 years after the period in which the victim is his or her client or patient and not his or her spouse. The consent of the victim is not a defense to a prosecution under this subdivision. A prosecution under this subsection shall not be used as evidence that the victim is mentally incompetent.

(f) That other person is at least 16 years of age but less than 18 years of age and a student at a public or nonpublic school, and the actor is a

teacher, substitute teacher, or administrator of that public or nonpublic school. This subdivision does not apply if the other person is emancipated or if both persons are lawfully married to each other at the time of the alleged violation.

(2) Criminal sexual conduct in the fourth degree is a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$ 500.00, or both.

**Sec. 520g.** (1) Assault with intent to commit criminal sexual conduct involving sexual penetration shall be a felony punishable by imprisonment for not more than 10 years.

(2) Assault with intent to commit criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than 5 years.

*Criminal child abuse.*

Apart from criminal sexual conduct, the criminal statute most relevant to civil child protection proceedings and most likely to be invoked by prosecutors is the criminal child abuse statute:

**Sec. 136b.** (1) As used in this section:

(a) "Child" means a person who is less than 18 years of age and is not emancipated by operation of law as provided in section 4 of 1968 PA 293, MCL 722.4.

(b) "Cruel means brutal, inhuman, sadistic, or that which torments.

(c) "Omission" means a willful failure to provide the food, clothing, or shelter necessary for a child's welfare or the willful abandonment of a child.

(d) "Person" means a child's parent or guardian or any other person who cares for, has custody of, or has authority over a child regardless of the length of time that a child is cared for, in the custody of, or subject to the authority of that person.

(e) "Physical harm" means any injury to a child's physical condition.

(f) "Serious physical harm" means any physical injury to a child that seriously impairs the child's health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

(g) "Serious mental harm" means an injury to a child's mental condition or welfare that is not necessarily permanent but results in visibly demonstrable manifestations of a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(2) A person is guilty of child abuse in the first degree if the person knowingly or intentionally causes serious physical or serious mental harm to a child. Child abuse in the first degree is a felony punishable by imprisonment for not more than 15 years.

(3) A person is guilty of child abuse in the second degree if any of the following apply:

- (a) The person's omission causes serious physical harm or serious mental harm to a child or if the person's reckless act causes serious physical harm to a child.
- (b) The person knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child regardless of whether harm results.
- (c) The person knowingly or intentionally commits an act that is cruel to a child regardless of whether harm results.

(4) Child abuse in the second degree is a felony punishable by imprisonment for not for than 4 years.

(5) A person is guilty of child abuse in the third degree if the person knowingly or intentionally causes physical harm to a child. Child abuse in the third degree is a misdemeanor punishable by imprisonment for not more than 2 years.

(6) A person is guilty of child abuse in the fourth degree if the person's omission or reckless act causes physical harm to a child. Child abuse in the fourth degree is a misdemeanor punishable by imprisonment for not more than 1 year.

(7) This section does not \*\*\* prohibit a parent or guardian, or other person permitted by law or authorized by the parent or guardian, from taking steps to reasonably discipline a child, including the use of reasonable force.<sup>28</sup>

## 2.3. PROTECTIVE SERVICES INVESTIGATION

### 2.3.1. *Intake*

The MDHS Services Manual, Item 712 and following sets forth the intake process for receiving and evaluating reports of suspected child abuse and neglect. The administrative process need not be recited here. The Services Manual provides guidance to the caseworker for the initial fact-finding and discretionary preliminary investigation. The Department does not assign every case for field investigation but evaluates them according to established intake criteria.

### 2.3.2. *Field Investigation*

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<sup>28</sup>. MCL 750.136b

Once a complaint is accepted, it is assigned for field investigation within 24 hours, although the alleged seriousness of the risk to the children may dictate a more immediate response.<sup>29</sup>

A full description of the protective services investigation and assessment process is not necessary here. *See* the MDHS Services Manual. The major elements include: 1) a face-to-face contact with the parents, guardian or caretaker and the child to determine the presence or degree of danger; 2) an effort to visually assess the part of the child's body which is alleged to have sustained injury; and 3) a determination of the sources of danger and risk to the child based on an assessment of risk, including an assessment of the parents and significant other persons associated with the family, the children, and the general situation. The investigation and evaluation of all complaints assigned for field investigation must be completed within 30 calendar days from the date the Department received the complaint.<sup>30</sup>

Protective services are to be provided as long as the child needs protection. Cases that have an intensive or high score on the abuse/neglect scale must be kept open until the risk level is moderate or low.<sup>31</sup>

## 2.4. CONTACTING THE CHILD

### 2.4.1. *Generally*

In the course of the investigation, the worker is expected to make a face-to-face contact with the child.<sup>32</sup> Where parents have challenged protective services for contacting children as part of the initial investigation, courts have, up to now, found no constitutional violation. Parents have no clearly established statutory or constitutional rights to prohibit workers from talking to their child if the worker can gain access to the child outside of the home. Parental consent is not required to interview a child at school, a neighbor or relative's home, a medical facility, a day care home or center.<sup>33</sup> No court has determined that talking with a child as part of a protective services investigation without parental permission is constitutionally prohibited.

### 2.4.2. *At Home*

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<sup>29</sup>. MCL 722.628(1)

<sup>30</sup>. MDHS CPS Manual, Item 712

<sup>31</sup>. *Id.*

<sup>32</sup>. MCL 722.628(2); MDHS CPS Manual, Item 712

<sup>33</sup>. *See Fitzgerald v. Williamson*, 787 F.2d 403 (8th Cir. 1986); *Doe "A" v Special School District of St. Louis County*, 637 F.Supp. 1138 (E.D. Mo 1986); *Achterhof v. Selvaggio*, 886 F.2d 826 (6<sup>th</sup> Cir 1989) No. 88-2231

The sanctity of the home is constitutionally protected and parents may legally refuse a caseworker admittance to the home and refuse access to the child. In such a case the worker might seek a court order to assist the investigation or contact the child at some other location. Current law does not require the workers to apprise parents of their right to refuse entry. Even silence may constitute implied consent as long as the parent makes no physical gesture such as barring the door, which indicates lack of consent.

#### 2.4.3. *At School*

Schools and other institutions are required to cooperate with the department in child protection investigations, including allowing access to the child for interview without the parent's consent.

Schools and other institutions shall cooperate with the department during an investigation of a report of child abuse or neglect. Cooperation includes allowing access to the child without parental consent if access is necessary to complete the investigation or to prevent abuse or neglect of the child...<sup>34</sup>

In an opinion of September 6, 1995, Michigan's Attorney General supported the investigative powers of the DHS in relation to the schools. The Attorney General, interpreting the Child Protection Law, concluded that a school administration:

- may not deny access to a child protective services worker who wishes to interview a child at school;
- may not require a child protective services worker to establish in writing the need to interview a child;
- does not have the right to have a school official at the interview; and
- may not prevent the interview with a child until the child's parents have been notified.<sup>35</sup>

No child is to be subjected to a search that requires the child to remove his or her clothing to expose buttocks or genitalia or a girl's breasts without a court order.<sup>36</sup>

If the DHS has contact with a child in a school it shall:

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<sup>34</sup>. MCL 722.628(8)

<sup>35</sup>. OAG 1995, No 6869

<sup>36</sup>. MCL 722.628(10)



- (a) Before contact with the child, the department investigator shall review with the designated school staff person the department's responsibilities under this act and the investigation procedure.
- (b) After contact with the child, the department investigator shall meet with the designated school staff person and the child about the response the department will take as a result of contact with the child. The department may also meet with the designated school staff person without the child present and share additional information the investigator determines may be shared subject to the confidentiality provisions of this act.
- (c) Lack of cooperation by the school does not relieve or prevent the department from proceeding with its responsibilities under this act.<sup>37</sup>

The DHS is to contact the parent or other person responsible for the child's health or welfare about the DHS' contact with the child. *See* discussion of **NOTIFYING PARENTS**, below.

Other institutions, such as day care centers and hospitals, are also required to cooperate with the Department investigations. The statute requires that if access to the child occurs within a hospital, the investigation be conducted so as not to interfere with the medical treatment of the child or other patients.<sup>38</sup>

#### 2.4.4. *No Interview in Presence of Suspected Perpetrator*

During an investigation of suspected child abuse or neglect, the child who is subject of the investigation shall not be interviewed in the presence of a person suspected of causing the abuse.<sup>39</sup>

## 2.5. **VISUAL ASSESSMENT OF CHILD**

The MDHS Services Manual requires that in investigating a complaint of physical abuse or neglect and the child has not been medically examined, the worker must make an effort to view the part of the child's body alleged to have sustained injury. The visual assessment provision is subject to several restrictions. Where the relevant part of the body is not publicly visible, that is, not the face, arms, hands, legs, back, abdomen, etc., the worker is to ask the parents to remove the child's clothing so the area is visible. Looking for welts or bruises on limbs or back of an older child or for diaper rash on an infant is appropriate with parent or guardian permission. For children older than an infant, the worker is not to view and assess the genitalia or breasts of female children or genitalia of male children.

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<sup>37</sup>. MCL 722.628(9)

<sup>38</sup>. **MCL 722.628(10)**

<sup>39</sup>. MCL 722.628c

A qualified medical professional must do this. Viewing the buttocks of children age six and under is appropriate with verbal permission of the parent or guardian. Viewing buttocks of children over the age of six requires written permission from the parent or guardian.<sup>40</sup>

No child is to be subjected to a search at school that requires the child to remove his or her clothing to expose buttocks or genitalia or a girl's breasts without a court order.<sup>41</sup>

## 2.6. NOTIFYING PARENTS

The Child Protection Law requires law enforcement or the Department to notify the parent or legal guardian of the investigation as soon as the agency or Department discovers the identity of that caretaker if "informing the parent or legal guardian would not endanger the child's health or welfare."<sup>42</sup> Similarly when contact is made with the child at school, the contact is to be made as soon afterward as the person can be reached, except that "The department may delay the notice if the notice would compromise the safety of the child or child's siblings or the integrity of the investigation, but only for the time 1 of those conditions exists."<sup>43</sup>

## 2.7. MEDICAL EXAMINATION OF CHILD

### 2.7.1. *Determining the Need for a Medical Exam*

A medical examination is often necessary to determine how the alleged injury or condition may have occurred and whether it could have resulted from other than accidental means. While necessary medical treatment will be provided for an injury, the primary intent of the examination is diagnosis of the cause of the child's injury.<sup>44</sup>

The Department's policy requires that a medical exam be sought if: 1) there is suspected child sexual abuse; 2) the complain alleges, or the Agency's investigation indicates, that the child has been seriously or repeatedly physically injured as a result of abuse and/or neglect; or 3) the investigation by the Agency indicates the child shows signs of malnourishment, or is otherwise in need of medical treatment; and 4) the child is under the age of five, handicapped in some way or developmentally disabled, and the subject of a complaint investigation of alleged abuse and/or neglect and any of the following conditions apply<sup>45</sup>:

- Explanation of bruises or injuries by the child, parent(s) or

<sup>40</sup>. MDHS CPS Manual, Item 713-4

<sup>41</sup>. MCL 722.628(10)

<sup>42</sup>. MCL 722.628(1)

<sup>43</sup>. MCL 722.628(8)

<sup>44</sup>. MDHS CPS Manual Item 713-4

<sup>45</sup>. MDHS CPS Manual, Item 713-4

caretaker(s) is not believable or is suspicious.

- The child has unusual bruises, marks or any signs of extensive or chronic physical injury.
- The child appears malnourished or ill.
- The child appears to be fearful of parents or caregivers or exhibits other characteristics such as withdrawal or anxiety, which indicates that they feel threat of harm.
- There has been a serious injury or death of a sibling in the past, or there has been a current event of this nature.
- A baby who is not mobile and has marks or bruises. It is not likely that babies who are not yet able to crawl or walk will have marks or bruises unless they were inflicted. All babies with marks or bruises must have a medical examination.
- In cases in which the child has bruises, marks or injuries that have not been photographed by CPS because of the visual assessment restrictions of the CPS Law/Policy, CPS is to request that photographs be taken by the physician during the physical examination. The photographs, along with the findings of the medical examination, must be made available to CPS if pertinent to the investigation and a compelling need is alleged.

The Child Protective Statute, MCL 722.124a(1) provides:

A probate court, a child placing agency, or the department may consent to routine, nonsurgical medical care, or emergency medical and surgical treatment of a minor child placed in out-of-home care pursuant to Act No. 280 of the Public Acts of 1939, as amended, being sections 400.1 to 400.121 of the Michigan Compiled Laws, Act No. 288 of the Public Acts of 1939, as amended, being sections 710.21 to 712A.28 of the Michigan Compiled Laws, or this act. If the minor child is placed in a child care organization, then the probate court, the child placing agency, or the department making the placement shall execute a written instrument investing that organization with authority to consent to emergency medical and surgical treatment of the child. The department may also execute a written instrument investing a child care organization with authority to consent to routine, nonsurgical medical care of the child. If the minor child is placed in a child care institution, the probate court, the child placing agency, or the

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department making the placement shall in addition execute a written instrument investing that institution with authority to consent to the routine, nonsurgical medical care of the child.

### 2.7.2. *Physician is Required to Perform Necessary Exams*

When a child suspected of being abused or neglected is brought to a physician's attention the physician is required to conduct a proper examination. Permission of a parent or other authority is not necessary.

(2) When a child suspected of being an abused or neglected child is seen by a physician, the physician shall make the necessary examinations, which may include physical examination, x-rays, photographs, laboratory studies, and other pertinent studies.<sup>46</sup>

X-rays can be crucial to an early and accurate diagnosis. Both x-ray and photographs graphically preserve evidence of alleged abuse or neglect long after memories and the ability to verbally describe the conditions have faded.

Having performed an exam, the physician is further required to make a written report to the department containing summaries of the evaluation.<sup>47</sup>

### 2.7.3. *Getting the Child to the Physician*

#### 2.7.3.a. *Parental Permission*

A worker should first ask the parent or caretaker to take the child to a hospital or clinic for examination. In all but emergency situations, the protective services worker and others should obtain a parent's written permission or the written permission of the immediate caretaker to transport a child to a physician before trying other means of getting a child to a doctor. In a true emergency, however, the following options are available.

#### 2.7.3.b. *Court Order*

If the worker cannot obtain parental permission to take the child to a physician or the parent denies permission, the worker may apply to the Family Court for an order. The court may order the child taken into custody if the "conditions or surroundings under which the child is found

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<sup>46</sup>. MCL 722.626(2)

<sup>47</sup>. *Id.*

are such as would endanger the health, safety, or welfare of the child.”<sup>48</sup>  
See discussion at **2.11** below for the procedure.

#### *2.7.3.c. Law Enforcement Assistance*

Law enforcement officers may, after investigation and without an order of the court, immediately take into custody any child where the officer has reasonable grounds to believe that conditions or surroundings are such as to endanger the health, morals or welfare of the child.”<sup>49</sup> Among other things, the police officer removing a child is required to immediately contact the court for instructions as to placement of the child.<sup>50</sup> Presumably however, the officer may transport a child to a physician while simultaneously seeking verbal or written court permission to have the child examined.

#### *2.7.3.d. Worker's Own Authority*

The Child Protection Law requires the Department to obtain a medical evaluation "without a court order if the child's health is seriously endangered and a court order cannot be obtained.”<sup>51</sup> Thus, if the worker reasonably believes the child's health is seriously endangered, if parental permission is not granted, and if a court order cannot be obtained, the worker is required to transport the child to a physician on his or her own authority.<sup>52</sup> The worker should first request law enforcement assistance to remove the child for a medical exam and should not expose him or herself to risk of physical injury.<sup>53</sup>

If the worker believes a medical exam is necessary but the child's life or health is not seriously endangered, the worker should wait and apply to the court for authority.

#### *2.7.4. Detention of Child in Hospital*

If the attending physician believes that a child suspected of being abused or neglected may be in a potentially harmful situation, the "person in charge" at the hospital may detain the child on his or her own authority, until the next business day of the court. The "person in charge" for these purposes is generally identified in protocols for each hospital and could be the attending physician, the chief of the pediatric service, the hospital administrator or anyone else designated by the hospital.

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<sup>48</sup>. MCR 3.963(B)

<sup>49</sup>. MCL 712A.14, MCR 3.963(A)

<sup>50</sup>. MCR 3.963(C)

<sup>51</sup>. MCL 722.626(3)

<sup>52</sup>. [MDHS CPS Manual Item 713-4](#)

<sup>53</sup>. *Id.*

The statute reads<sup>54</sup>:

If a child suspected of being abused or neglected is admitted to a hospital or brought to a hospital for outpatient services and the attending physician determines that the release of the child would endanger the child's health or welfare, the attending physician shall notify the person in charge and the department. The person in charge may detain the child in temporary protective custody until the next regular business day of the probate court, at which time the probate court shall order the child detained in the hospital or in some other suitable place pending a preliminary hearing ...or order the child released to the child's parent, guardian or custodian.

Physicians report that the authority of this section is rarely invoked. When a recommendation is skillfully made by a physician that a child remains in the hospital, most parents give permission. While voluntary cooperation is the ideal, the authority to detain without parental permission is very important for the protection of the child when needed.

## **2.8. ACCESS TO CONFIDENTIAL RECORDS**

Privilege, except for that between lawyer and client or that made to a member of the clergy in his or her professional character in a confession or similarly confidential communication, is abrogated for purposes of child protection proceedings.<sup>55</sup> The Legislature and Michigan Supreme Court decisions have made it increasingly clear that in the interests of protecting children from harm, there should be a free flow of information to child protective services and to the court. To determine whether child abuse or neglect has occurred, the DHS may obtain access to medical records, public health records, school records, records of drug counseling, mental health records, Friend of the Court records and the Law Enforcement Information Network. For a full discussion *see* Chapter 16, **CONFIDENTIALITY**.

## **2.9. ENTERING THE HOME**

Privacy of a home is protected by the Fourth Amendment to the U.S. Constitution incorporated verbatim as Article 1, §11 of the Michigan Constitution. It guarantees "the right of the people to be secure in their persons, houses, papers, and effects." Therefore, except in cases of emergency, workers should obtain direct or implied consent from an adult person left in charge before entering the home or should have a search warrant or court order. In practice, law enforcement assistance is essential in executing a search warrant or a court order

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<sup>54</sup>. MCL 722.626(1)

<sup>55</sup>. MCL 722.631

to keep peace, prevent physical injury to all involved and prevent the destruction of evidence.

A federal court in *O'Donnell v. Brown* reaffirmed that the Fourth Amendment restricts unlawful entry by social workers into a private home.<sup>56</sup> The *O'Donnell* case arose from the entry of police officers and CPS caseworkers into and the temporary removal of children from a private family home while their parents were out of town, following a 911 call alleging child neglect. In *O'Donnell*, the authorities visited the house more than once during a span of eight hours before deciding to remove the children. When the police officers and CPS finally entered the home, they did not have a valid, written order giving them authority to enter the home.

In holding that the CPS caseworkers violated the Fourth Amendment, the *O'Donnell* Court held that the Fourth Amendment protects against unreasonable searches and seizures. Government entry into a private home is considered a search implicating the Fourth Amendment. Warrantless searches and seizures are per se unreasonable under the Fourth Amendment, except pursuant to a few specifically established exceptions, such as consent or exigent (emergency) circumstances.

In *O'Donnell*, the police and CPS did not have consent to enter the home and remove the children. Given this, the *O'Donnell* Court concluded that only emergency circumstances would justify the warrantless entry into the home. "Exigent circumstances" occur where a real immediate and serious consequences would occur were a police officer to postpone action to get a warrant. There must be a need to protect or preserve life or avoid serious injury. The *O'Donnell* Court made clear: mere possibility of danger is not enough. The bottom line of this case is constitutional rights should not be lightly disregarded. If CPS are unsure whether a situation presents emergency circumstances then it likely does not.

To avoid the Fourth Amendment legal issues in *O'Donnell*, the Michigan Court Rules *specifically* addresses under what circumstances CPS and law enforcement can enter a private home and take a child into custody (1) without a court order [See, MCR 3.963 (A)] and (2) with a court order [See, MCR 3.963 (B)].

**MCR 3.963 (A) Taking Custody Without Court Order.** An officer may without court order remove a child from the child's surroundings and take the child into protective custody if, after investigation, the officer has reasonable grounds to conclude that the *health, safety, or welfare* of the child is endangered.

The language in MCR 3.963 (A) is consistent with the language found in MCL 712A.14. The *O'Donnell* Court briefly addressed MCR 3.963 and MCL 712A.14,

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<sup>56</sup>. *O'Donnell v. Brown*, 335 F. Supp. 2d 787, 2004 U.S. Dist. LEXIS 18976 (W.D. Mich. 2004)

indicating that they may authorize the seizure of a child, but they do not give law enforcement the authority to enter a home to effect the seizure. The entry itself must satisfy the Fourth Amendment, which generally requires a warrant (*aka*, an order authorizing entry into a specified premises) unless there are emergency circumstances, which would be the case in situations falling under MCR 3.963 (A). Cases falling under MCR 3.963 (A) are those cases where law enforcement reasonably concluded that they need to immediately enter and remove a child out of the home because that child was in real, immediate and serious danger. Law enforcement's entry into a private home is supported by MCR 3.963(A) only in situations where there is no time to spare to get a signed, written order by the court authorizing law enforcement to enter the home to remove the child.

Otherwise, the Fourth Amendment applies to law enforcement, social workers, as it does to all other officers and agents of the State whose requests to enter, however benign or well-intentioned, are met by a closed door. There is no social worker exception to the strictures of the Fourth Amendment. In circumstances, such as *O'Donnell*, where it is not an emergency to remove the child from the home, law enforcement and CPS must obtain a signed, written order to both enter the home and to take the children into custody. See MCR 3.963 (B) below.

**MCR 3.963 (B) Court-Ordered Custody.** (1) The court may order an officer or other person to immediately take a child into protective custody when, after presentment to the court of a petition, a judge or referee has reasonable grounds to believe that conditions or surroundings under which the child is found are such as would endanger the health, safety, or welfare of the child and that remaining in the home would be contrary to the welfare of the child. The court may include in such an order authorization to enter specified premises to remove the child. See JCO5b.

Had the police officers and CPS obtained a signed, written order authorizing them to enter the O'Donnell home and remove and place the children into protective custody, they may very well have avoided the Fourth Amendment violations. See JC05b. State statutes and regulations cannot be construed to displace the protections of the United State Constitution even when the State acts to protect the welfare of children.

## 2.10. PHYSICAL EVIDENCE AND PHOTOGRAPHS

### 2.10.1. *Physical Evidence*

Physical evidence may not be taken from the home without permission of the person in charge, a search warrant or a court order. Caseworkers may seek a Juvenile Court investigation order by filing a petition, making a showing of probable cause that the facts alleged are true and constitute



legal neglect, and showing a need for further investigation.<sup>57</sup> Workers should seek the assistance of law enforcement in collection, testing and storing of physical evidence.

### *2.10.2. Photographs*

Photographs are an important investigative tool in child abuse and neglect cases. Evidence of bruises and injuries that may fade over time is preserved; home conditions are documented. In these cases a picture is indeed worth more than a thousand words. Once taken, the photographs are admissible in court if the proper foundation is laid, i.e. that the photo is a fair and accurate representation of the child or home situation at the time the photo was taken. Contrary to popular belief, Michigan law does not require that photos be automatically developed as in Polaroid camera or be developed in private darkrooms in order to maintain a chain of custody. 35mm cameras take far superior photos than do Polaroids and the film may be commercially developed. The person who took the photos or who was present during the taking of the photos must testify that the pictures fairly and accurately represent the items photographed at the time.

If parents or the person in apparent charge gives permission to photograph the children or the home, such photos are permitted. Implicit or tacit permission may also justify taking photos. For instance, the worker may say, "I'm going to take a few pictures now, okay?" and no objection is raised. Photographs are also permitted where there is no expectation of privacy such as when the children are in a public place or in someone else's home or at school. Photos of face and hands and arms are permissible as are photos of the outside of the home or through open windows. Photos of private body parts or the interior of the home cannot be taken without permission, a search warrant or court authority.

Photographs may be taken of a child as part of a medical exam without permission of the parent or custodian under authority of the Child Protection Law.<sup>58</sup> A child in court custody may have his or her photo taken.<sup>59</sup>

## **2.11. USING THE COURTS TO ASSIST IN INVESTIGATION**

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<sup>57</sup>. MCR 3.961; MCR 3.965(B)(11); MCL 712A.12; MCR 3.923(A)(3)(b)

<sup>58</sup>. MCL 722.626(2)

<sup>59</sup>. MCR 3.923(C)

### 2.11.1. *Generally*

When a worker cannot obtain parental or caretaker permission to talk with a child, inspect the home, take photos, obtain a medical exam, etc., the worker may wish to apply to the Family Court for an order or ask the prosecuting attorney to obtain a search warrant.

### 2.11.2. *Search Warrant*

Prosecutors are accustomed to applying for search warrants where violations of criminal law may have occurred and those procedures often work well for gathering evidence that may be subsequently used in child protection cases.

In *O'Donnell v. Brown*, the federal court addressed the necessity of obtaining a search warrant when entering a private home, even in the name of ensuring a child's welfare.<sup>60</sup> The *O'Donnell* Court held where CPS caseworkers, accompanying local police, entered into a family home and removed children based on a verbal order from a referee, that the referee's verbal order did not comprise valid authority to either enter the home or remove the children. In *O'Donnell*, the authorities visited the home more than once before deciding to remove the children. There was time to obtain a written order. The *O'Donnell* Court specified that the Fourth Amendment required a written order for these actions where no exigent circumstances existed. Again, the Fourth Amendment protects against unreasonable searches and seizures. Government entry into a private home is considered a search implicating the Fourth Amendment. Warrantless searches and seizures are per se unreasonable under the Fourth Amendment, except under established exceptions, such as the exigent circumstances exception. The entry into a private home must satisfy the Fourth Amendment, which generally requires a warrant.

### 2.11.3. *Emergency Non-written Petitions*

Ordinarily, court action is initiated by filing a written petition with the court. A worker may, however, apply for an emergency order in a telephone conversation between the worker and the judge or referee in circumstances where filing a written request with the court would put the child in continued danger or risk losing valuable evidence. Authority for requesting court action orally and without a written petition is based upon MCR 3.961(A) that requires a request for court action to be in writing

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<sup>60</sup> . *O'Donnell v. Brown*, 335 F. Supp. 2d 787, 2004 U.S. Dist. LEXIS 18976 (W.D. Mich. 2004)

"absent exigent circumstances."<sup>61</sup> The oral request should be followed up with a written petition as soon as possible.

#### 2.11.4. *Placement*

Under authority of MCL 712A.15 and MCR 3.963(B), the court may order an officer or other person to immediately take a child into custody. The Juvenile Court has the authority to temporarily place children in foster care upon the filing of a petition and without first conducting an evidentiary hearing.<sup>62</sup> To obtain such an order the worker must present a petition to the court. Ordinarily the petition is written, but, as discussed above, an oral petition may be used in emergency situations. Then the petitioner must show a judge or referee "reasonable grounds to believe that conditions or surroundings under which the child is found are such as would endanger the health, safety, or welfare of the child."<sup>63</sup> If the court makes that finding it may order that certain identified premises be entered and that the child be placed in protective custody pending a preliminary hearing.<sup>64</sup>

#### 2.11.5. *Court Orders For Medical Examinations and Further Investigation*

Once a petition is filed, as to the child, the court may order other investigation including taking of photos, gathering certain physical evidence, and obtaining expert evaluations.<sup>65</sup> Before entering such investigation orders, the court must have a petition, before it (which could be an oral petition under exigent circumstances) find probable cause to believe that the facts of the petition are true and constitute legal neglect, and, based on that finding, authorize filing of the petition. Once the petition is filed, the court can order further investigation based upon a showing of need, including ordering the child to be examined by a physician, dentist, psychologist or psychiatrist.<sup>66</sup>

Section 12 of the Juvenile Code reads in relevant part<sup>67</sup>:

After a petition shall have been filed and after such further investigation as the court may direct, in the course of which the court may order the child to be examined by a physician, dentist, psychologist, or psychiatrist, the court may dismiss said petition or may issue a summons reciting briefly the substance of the petition, and

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<sup>61</sup>. MCR 3.961(A)

<sup>62</sup>. *In re Albring*, 160 Mich.App. 750 (1987)

<sup>63</sup>. MCR 3.963(B)

<sup>64</sup>. *Id.*

<sup>65</sup>. MCL 712A.12; MCR 3.923.

<sup>66</sup>. MCL 712A.12

<sup>67</sup>. MCL 712A.12

requiring the person or persons who have the custody or control of the child, or with whom the child may be, to appear personally and bring the child before the court at a time and place stated... .

The court may also order evaluations of parents before adjudication based on language in MCL 712A.12 which provides that the court can direct any "such further investigation" as needed. MCR 3.923(A)(3)(b) provides: if *at any time* the court believes the evidence has not been fully developed it may adjourn the matter and order production of other evidence. Based upon the statutory language, read in conjunction with the court rule, the court has the authority to enter orders as to examination or evaluation of a parent or a child at any time during the proceedings, including the adjudicative phase and prior to jurisdiction.

The court rule [MCR 3.923(B)] further clarifies that the court may order that a minor *or a parent* be evaluated by a physician, dentist, psychologist or psychiatrist.<sup>68</sup> Case law, *In re Johnson*, additionally supports the court's authority to order evaluations of the parents before adjudication.<sup>69</sup> With respect to a pre-adjudication issue involving a psychological evaluation of a parent, the *Johnson* Court held, "The dominant consideration of the court shall be the welfare of the child, which must prevail over conflicting rights of the parent, allowing the [family] court the discretion to compel [an] examination [to] help protect the child's welfare by permitting the acquisition of information essential to the ... proceedings ... ." <sup>70</sup>

## 2.12. CONCLUDING THE INVESTIGATION; FIVE-TIERED RESPONSE

Upon completion of its investigation, the law requires that the Department place the case in one of five categories for response.

Sec. 8d. (1) For the department's determination required by section 8, the categories, and the departmental response required for each category, are the following:

- (a) Category V - services not needed. Following a field investigation, the department determines that there is no evidence of child abuse or neglect.
- (b) Category IV - community services recommended. Following a field investigation, the department determines that there is not a preponderance of evidence of child abuse or neglect, but the structured decision-making tool indicates that there is future risk of harm to the child. The department shall assist the child's family in voluntarily

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<sup>68</sup>. MCR 3.923(B)

<sup>69</sup>. *In re Johnson*, 142 Mich App 764, 766 (1985)

<sup>70</sup>. *Id.*

participating in community-based services commensurate with the risk to the child.

(c) Category III - community services needed. The department determines that there is a preponderance of evidence of child abuse or neglect, and the structured decision-marking tool indicates a low or moderate risk of future harm to the child. The department shall assist the child's family in receiving community-based services commensurate with the risk to the child. If the family does not voluntarily participate in services, or the family voluntarily participates in services, but does not progress toward alleviating the child's risk level, the department shall consider reclassifying the case as category II.

(d) Category II - child protective services required. The department determines that there is evidence of child abuse or neglect, and the structured decision-making tool indicates a high or intensive risk of future harm to the child. The department shall open a protective services case and provide the services necessary under this act. The department shall also list the perpetrator of the child abuse or neglect, based on the report that was the subject of the field investigation, on the central registry, either by name or as "unknown" if the perpetrator has not been identified.

(e) Category I - court petition required. The department determines that there is evidence of child abuse or neglect and 1 or more of the following are true:

- (i) A court petition is required under another provision of this act.
- (ii) The child is not safe and a petition for removal is needed.
- (iii) The department previously classified the case as category II and the child's family does not voluntarily participate in services.
- (iv) There is a violation, involving the child, of a crime listed or described in section 8a(1)(b), (c), (d), or (f) or of child abuse in the first or second degree as prescribed by section 136b of the Michigan penal code, 1931 PA 328, MCL 750.136b.

(2) In response to a category I classification, the department shall do all of the following:

- (a) If a court petition is not required under another provision of this act, submit a petition for authorization by the court under section 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2.
- (b) Open a protective services case and provide the services necessary under this act.
- (d) List the perpetrator of the child abuse or neglect, based on the report that was the subject of the field investigation, on the central registry, either by name or as "unknown" if the perpetrator has not been identified.<sup>71</sup>

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<sup>71</sup>. MCL 722.628d(1)&(2)